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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205492
Party	Defendant OPIVU Products & Cosmetics, LLC
Correspondence Address	OPIVU PRODUCTS & COSMETICS, LLC OPIVU PRODUCTS & COSMETICS, LLC 111 TOWN AND COUNTRY DR STE A DANVILLE, CA 94526-3941 moses@opivu.com
Submission	Answer
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Date	07/17/2012
Attachments	Applicant OPIVU's Answer.pdf (5 pages)(46647 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

O P I Products, Inc.,

Opposer,

v.

OPIVU Products & Cosmetics, LLC,

Applicant.

Opposition No. 91205492

Application Serial No. 85/165,151

Mark: OPIVU

APPLICANT OPIVU PRODUCTS & COSMETICS, LLC'S ANSWER

Applicant OPIVU Products & (“Applicant”) hereby answers the Notice of Opposition filed by O P I Products, Inc. (“Opposer”) as follows:

In response to the grounds for opposition enumerated in Opposer’s Electronic System for Trademark Trials and Appeals (“ESTTA”) Notice of Opposition form, Applicant denies that there are any grounds to sustain the opposition and denies that Opposer owns any mark(s) sufficient to constitute a basis for the opposition.

In response to the unnumbered introductory paragraph, Applicant denies that Opposer will be damaged by the registration of Application Serial No. 85/165,151.

1. In response to paragraph 1, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 1 and, therefore, denies each and every allegation in paragraph 1.

2. In response to paragraph 2, Applicant admits that it is a Delaware limited liability company with an address at 111 Town and Country Drive, Suite A, Danville, CA 94526.

3. In response to paragraph 3, including subparagraphs (A) – (F), Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 3 and, therefore, denies each and every allegation in paragraph 3.

4. In response to paragraph 4, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 4 and, therefore, denies each and every allegation in paragraph 4.

5. In response to paragraph 5, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies each and every allegation in paragraph 5.

6. In response to paragraph 6, Applicant responds that it lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies each and every allegation in paragraph 6.

7. In response to paragraph 7, Applicant admits that it filed U.S. Application Serial No. 85/165,151 on October 29, 2010 and listed the first use anywhere as October 29, 2010 and the first use in commerce as October 29, 2010.

8. In response to paragraph 8, Applicant admits that it filed U.S. Application Serial No. 85/165,151 for cosmetics in International Class 3.

9. In response to paragraph 9, Applicant denies each and every allegation in paragraph 9.

10. In response to paragraph 10, Applicant denies each and every allegation in paragraph 10.

11. In response to paragraph 11, Applicant denies each and every allegation in paragraph 11.

12. In response to paragraph 12, Applicant denies each and every allegation in paragraph 12.

13. In response to paragraph 13, Applicant denies each and every allegation in paragraph 13.

14. In response to paragraph 14, Applicant denies each and every allegation in paragraph 14.

15. In response to paragraph 15, Applicant denies each and every allegation in paragraph 15.

16. In response to paragraph 16, Applicant denies each and every allegation in paragraph 16.

17. In response to paragraph 17, Applicant denies each and every allegation in paragraph 17.

18. In response to paragraph 18, Applicant denies each and every allegation in paragraph 18.

In response to Opposer's WHEREFORE and prayer for relief paragraph, Applicant denies that there is a basis to sustain the opposition and states that Application Serial No. 85/165,151 should be allowed to register.

AFFIRMATIVE DEFENSES

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

FIRST AFFIRMATIVE DEFENSE **NO INJURY OR DAMAGE**

19. Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial No. 85/165,151 for OPIVU.

SECOND AFFIRMATIVE DEFENSE
LACK OF LIKELIHOOD OF CONFUSION

20. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark(s) and has a distinct commercial impression from Opposer's claimed mark(s).

21. Applicant's registration of Applicant's mark does not create a likelihood of confusion among consumers that Applicant's goods are offered by, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's mark create a likelihood that consumers falsely will believe that Applicant and Opposer are affiliated in any way.

THIRD AFFIRMATIVE DEFENSE
FAILURE TO STATE A CLAIM

22. Opposer's claims are barred, in whole or in part, because Opposer has failed to state a claim for dilution.

WHEREFORE, Applicant requests judgment as follows:

1. That the Notice of Opposition be dismissed with prejudice;
2. That Application Serial No. 85/165,151 be allowed to register; and
3. That Applicant be granted further reasonable and appropriate relief.

Dated: July 17, 2012

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the following document:

APPLICANT OPIVU PRODUCTS & COSMETICS, LLC'S ANSWER

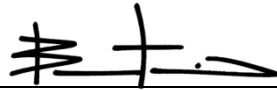
has been served on

Dax Alvarez
Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90025

by mailing such document on July 17, 2012 by First Class Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Dated: July 17, 2012



Bruno W. Tarabichi